CF0000058354

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

APPEAL OF PRISONER

Division Bench (Criminal)

No. 26481/2 Name ભગત દાસ

Father's name આયુદાસ સાંકળ રેલ્વે પાસા પોલી

Residence જિલ્લા બિલાસપુર (મ.પ્ર.) Age ૩૨ વર્ષ

Sentenced to ૩૦૨ મી.દિ.વિ. On ૨૫/૪/૯૫

Under section ~~સત્ર ન્યાયાધીશ સાહેબ~~ by સપ્તમ અતિરિક્ત સત્ર ન્યાયાધીશ બિલાસપુર (મ.પ્ર.)

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement ... ૨૫/૪/૯૫

2 Date on which copy received ... ૩૦/૪/૯૫

3 Date on which Appeal sent ... ૭/૯૫

4 Whether the prisoner wishes to be represented or ~~not~~ – Yes / No

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No. 2648/93 Name ભોગલદાસ અદ્ધે સાધુદાસ

Confined in ... જેલ Jail બિલાસપુર (મ.પ્ર.)

No. 672 /Law/ Dated ... 1995 ... 4/9/95

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ અતિરિક્ત જેડીએમ બિલાસપુર મોકલવામાં આવે છે (મ.પ્ર.)

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

સેલ્સ ગો-ઈ બિલાસ પારેલિ
સ.પ્ર.૬-139/95

Superintendent
મધ્યસ્થ જેલ, બિલાસપુર (મ.પ્ર.)

Date of receipt in ... office ...

Date of receipt record to accompany the ... Withdrawn

Memo of Appeal to the Appellate court ...

No ... Dated ... 199...

Forwarded to the ... 19 ... 1995

Date of receipt in Appellate Court ... 858

High Court of Madhya Pradesh JABALPUR
Receipt Clerk
High Court, Jabalpur

(P. T. O.)

XI-HC-22

(13)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक G.A.1290/95 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -

Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. Dhirendra Mishra, JJ.

20-1-2006

Dr. Shailesh Ahuja, counsel for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. M.P.S. Bhatia, Panel Lawyer for the State/respondent.

Oral judgment dictated on *Dais.*

Per L.C. Bhadoo, J: -

By this appeal under Section 374 (2) of the Cr.P.C. accused Mangal Das has questioned the legality of the judgment of conviction and order of sentence dated 24-8-1995 passed by the 7th Additional Sessions Judge, Bilaspur, in Sessions Trial No.139/94, whereby learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. sentenced him to undergo imprisonment for life.

The case of the prosecution is that Nohar Das (PW-1) lodged the report Ex.P-1 on 8-2-1994 at 2350 hours in Police Station: Pali to the effect that on that day he was at his residence, at about 7 p.m. Chandra Shekhar came to his house and informed that Mangal Das Manikpuri has murdered his mother-in-law Kachra Bai whose body is lying near the Leelaldhar rivulet. On hearing this, he along with Asan Das, Ganesh Das & Babu Das went near the rivulet and saw that the body of Kachra Bai was lying on the road in unconscious condition, there were injuries on hand, leg & neck of Kachra Bai inflicted by sharp edged

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश॰

weapon, blood was oozing out of the injuries and Kachra Bai died in the night at 9 p.m. After registering this case, the Station House Officer took up investigating and left for the scene of occurrence. After giving notice Ex.P-2 to the Panchas, he prepared the Panchnama Ex.P-3 of the body of Kachra Bai. On the basis of memorandum Ex.P-3 given by the accused, the weapon of offence axe was recovered under Ex.P-4. The Investigating Officer also took into possession plain soil and blood stained soil from the place of occurrence. Site plan of the place of occurrence Ex.P-7 was prepared by Bishambar Singh Patwari. The body was sent for post-mortem examination to the Primary Health Centre, Pali, where Dr. Prabhakar Naidu (PW-12) conducted post-mortem on the body, noticed as many as six injuries on various parts of the body of Kachra Bai and opined that the cause of death was due to shock due to hemorrhage to the left side of kidney which is ruptured.

After completion of investigation, charge sheet was filed in the Court of Judicial Magistrate, First Class, Katghora, who committed the case to the Sessions Judge, Bilaspur, from where learned Additional Sessions Judge received the case on transfer for trial.

The prosecution in order to establish charge against the accused examined 13 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution evidence appearing against him and stated that he has been falsely implicated in the crime. Learned Additional Sessions Judge after hearing the arguments of Additional Public

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Prosecutor and counsel for the accused convicted and sentenced the accused as mentioned in para 1 of this judgment.

We have heard Dr. Shailesh Ahuja, learned counsel for the appellant and Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. M.P.S. Bhatia, learned Panel Lawyer on behalf of the State/respondent.

The homicidal death of Kachra Bai is not in dispute. As far as the involvement of the accused in the crime in question is concerned, Dhan Bai (PW-6) who witnessed the crime has stated in her evidence that in the evening she along with Hara Bai was returning from the field, on the way Kachra Bai, Milap Kunwar & Padum Bai met them and they were going to their residence. The accused was standing on the bank of the river. When Kachra Bai reached near the accused, he asked her as to whether she will send his wife or not. Kachra Bai replied that she would send his wife, on which the accused wished Kachra Bai and attacked her with the axe, which he was carrying in his hand. He attacked on neck, hand & leg of Kachra Bai, as a result of which she fell down on the ground and this witness (PW-6) along with other ladies ran towards the village.

Padum Bai (PW-7) has corroborated the above evidence and stated that she was also with Dhan Bai and she witnessed the assault made by the accused with the axe. Nohar Das (PW-1) has stated in his evidence that on coming to know about the incident he went to the place of occurrence and saw that Kachra Bai was alive. On enquiry, she stated that her son-in-law Bhola has assaulted her. Therefore, Kachra Bai made oral dying declaration before this

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witness Nohar Das. The dying declaration made by Kachra Bai stands corroborated by the evidence of Dhan Bai (PW-6) & Padum Bai (PW-7) and also from the medical evidence. Ramkala (PW-3), Chandra Shekhar (PW-5) & Aasan Das (PW-9) have also stated that on enquiry Kachra Bai made oral dying declaration before them that her son-in-law has attacked her with the axe. Dr. Prabhakar Naidu (PW-12) has stated that he conducted post-mortem on the body of Kachra Bai on 9-2-1994 and found as many as six injuries on neck, leg & hand.

Therefore, in view of the above evidence of eyewitnesses and the oral dying declaration made by the deceased, it is established that the accused/ appellant was the author of the crime in question.

Dr. Shailesh Ahuja, learned counsel for the appellant argued that since Kachra Bai, mother-in-law of the accused was not sending wife & children of the accused with him since last one year, the accused was angry and in the anger he could not control his emotions and under frustration, all of a sudden, he attacked his mother-in-law.

On the other hand, Mr. U.N.S. Deo, learned Additional Public Prosecutor with Mr. M.P.S. Bhatia, learned Panel Lawyer for the State/respondent supported the judgment of the trial Court.

The evidence of Dhan Bai (PW-6), eyewitness, is to the effect that the accused met Kachra Bai on the bank of the river, when the accused enquired from Kachra Bai as to whether she would send his wife, Kachra Bai replied that

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she would send his wife, thereafter the accused wished her and attacked with the axe. So there was no question for the accused for getting enraged, when the deceased very politely replied that she would send his wife. Apart from that, the accused did not stop at that, he continued to assault Kachra Bai and caused as many as six injuries on various vital parts of the body i.e. neck, leg, scapular region, hand, and even the kidney was ruptured. As per the doctor's opinion, Kachra Bai died on account of haemorrhage, excessive bleeding out of the rupture of kidney.

Therefore, from the above evidence, it is established that the manner in which the accused assaulted repeatedly with the deadly weapon on the vital parts of the body, the intention of the accused was clear to cause the death of Kachra Bai. In the circumstances, we do not find any illegality and infirmity in the finding of the trial Court convicting the accused under Section 302 of the I.P.C.

In the result, the appeal is devoid of merit, same is liable to be dismissed and it is accordingly, dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge

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